



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 12, 1996

Ms. Christine T. Rodriguez
Staff Attorney
Legal Services, 110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR96-1126

Dear Ms. Rodriguez:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40304.

The Texas Department of Insurance (the "department") received a request for certain information concerning an investigation into sales practices of Metropolitan Life Insurance Company ("Metropolitan Life"). The requestor has asked for copies of Metropolitan Life's training materials, including written manuals, an audiotape, and a videotape relating to sales practices investigated by the department. You have submitted to this office samples of the information at issue,¹ and state that this information may involve Metropolitan Life's proprietary interests.

As provided by section 552.305 of the Open Records Act, this office provided Metropolitan Life the opportunity to submit reasons as to why the information at issue should be withheld. Metropolitan Life contends that the information at issue is excepted from disclosure pursuant to section 552.110, which provides an exception for "[a] trade secret or commercial or financial information obtained from a person and privileged or

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

confidential by statute or judicial decision.” Section 552.110 refers to two types of information: (1) trade secrets, and (2) commercial or financial information that is obtained from a person and made privileged or confidential by statute or judicial decision. *See* Open Records Decision Nos. 639 (1996); 592 (1991) at 2.

In regard to the trade secret aspect of section 552.110, this office will accept a claim that information is excepted from disclosure under the trade secret aspect of section 552.110 if a *prima facie* case is made that the information is a trade secret and no argument is submitted that rebuts that claim as a matter of law. Open Records Decision No. 552 (1990) at 5; *see* Open Records Decision No. 542 (1990) (governmental body may rely on third party to show why information is excepted from disclosure).

The Texas Supreme Court has adopted the definition of the term “trade secret” from the Restatement of Torts, section 757 (1939), which holds a “trade secret” to be

any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business. . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list or specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958).

The following criteria determines if information constitutes a trade secret:

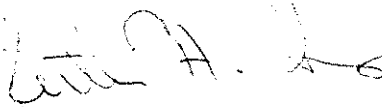
(1) the extent to which the information is known outside [the owner’s business]; (2) the extent to which it is known by employees and others involved in [the owner’s] business; (3) the extent of measures taken [by the owner] to guard the secrecy of the information; (4) the value of the information to [the owner] and to [its] competitors; (5) the amount of effort or money expended by [the owner] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Id. see also Open Records Decision No. 522 (1989).

Metropolitan Life has made a *prima facie* case that the information at issue is protected under the trade secret prong of section 552.110. See Open Records Decision No. 363 (1983) (third party duty to establish how and why exception protects particular information). The information at issue thus may not be disclosed.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 40304

Enclosures: Submitted documents, audiotape, and videotape

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